

25 JUN 2007

22850

OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, P.C.
1940 Duke Street
Alexandria, VA 22314

In re Application of :
TODA, Haruki :
U.S. Application No.: 10/507,475 :
PCT No.: PCT/JP2003/000155 :
Int. Filing Date: 10 January 2003 :
Priority Date: 04 April 2004 :
Attorney Docket No.: 89165.0017 :
For: PHASE-CHANGE MEMORY DEVICE :

DECISION

This is a decision on the papers filed on 24 April 2006 and 31 May 2007. No fee is required.

BACKGROUND

On 02 February 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be provided. Applicant was given two months to respond.

On 24 April 2006, applicant submitted a response to the Form PCT/DO/EO/905 which was accompanied by, *inter alia*, a petition to reset time period to reply; a declaration by Troy M. Schmelzer; an executed declaration; and exhibits A - E.

On 08 May 2006, a Notification of Abandonment was mailed.

On 31 May 2007, a petition to withdraw the holding of abandonment was mailed along with an executed declaration and a copy of the papers filed 24 April 2006 with a copy of the date-stamped postal receipt for those documents.

On 04 June 2007, a change of correspondence address and power of attorney was submitted.

DISCUSSION

The papers filed 24 April 2006 were located in the file. Applicant's postcard receipt for those documents will not be considered.

Petition to Reset Time Period

The time period to respond to the Form PCT/DO/EO/905 mailed 02 February 2005 including all extensions of time pursuant to 37 CFR 1.136(a) expired 02 September 2005. Accordingly, the above-captioned application was abandoned by operation of law when the petition was received on 24 April 2006. As such, this petition is deemed a petition to withdraw the holding of abandonment based on a failure to receive an Office action, not a petition to reset the time period due to late receipt of an Office action. See § 711.03(c) MPEP.

Petition to Withdraw the Holding of Abandonment

The showing required to establish the failure to receive an Office communication consists of: (1) a statement from the practitioner declaring that the Office communication was not received by the practitioner; (2) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and, (3) a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioners' statement.

Applicant satisfied items (1) and (2) in the declaration of Mr. Schmelzer.

With regards to item (3), applicant submitted documentary evidence in the form of a copy of the law firm's computer daily mail log during the period of 17 February 2005 to 31 March 2005. Applicant also submitted a copy of Mr. Schmelzer's daily docket report for 17 February 2006 and 10 March 2006.

The daily docket report evidence for 17 February 2006 and 10 March 2006 is not relevant to show that the Form PCT/DO/EO/905 mailed 02 February 2005 was received. The computer mail log for the law firm, on the other hand, is relevant and indicates that the Form PCT/DO/EO/905 was not received and processed. But this evidence is still not sufficient to meet item (3). Section 711.03(c) of the MPEP discusses the docket record requirement and states, in part:

A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. (Emphasis added).

Here, applicant must provide a copy of counsel's docket records for the date upon which a response to the Notification of Missing Requirements was due (*i.e.*, 17 April 2005). An example of such a record would be a daily "tickler" report or a daily log showing all applications for which a response is due on that date.

The computer mail log from 17 February 2005 to 31 March 2005 does not satisfy this requirement. Moreover, a single computer docket record for 17 April 2005 showing only the subject application (as submitted in the petition as Mr. Schmelzer's daily docket report) would also not satisfy this requirement. For this reason, item (3) is not satisfied.

Applicant has not yet met all of the requirements required to establish nonreceipt of an Office action.

CONCLUSION

For the reasons discussed above, applicants' petition to withdraw the holding of abandonment is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision.

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



James Thomson
Attorney Advisor
Office of PCT Legal Administration

Tel.: (571) 272-3302

Docket No. 310067US2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: Haruki TODA

SERIAL NO: 10/507,475

FILED: September 10, 2004

FOR: PHASE-CHANGE MEMORY DEVICE

**CONFIRMATION OF ATTORNEY AND
CORRESPONDENCE ADDRESS**

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

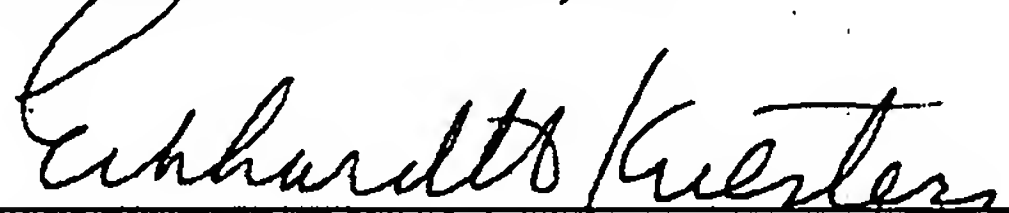
SIR:

The undersigned hereby confirms the attorneys of record for the above-identified application as those appearing in the Power of Attorney filed herewith, and accordingly requests the appropriate attorneys of record be noted, and the correct correspondence address be entered for this application as the address associated with Customer Number:

22850

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Eckhard H. Kuesters
Registration No. 29,870

Customer Number

22850

Tel. (703) 413-3000
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(OSMMN 02/07)

**SINGLE ASSIGNEE
CASE SPECIFIC POWER OF ATTORNEY**

| | | |
|--|-----------------------------------|-------------|
| POWER OF ATTORNEY and CORRESPONDENCE ADDRESS INDICATION FORM and STATEMENT UNDER 37 CFR 3.73(b) | Application Number | 10/507,476 |
| | Filing Date | 09/10/2004 |
| | First Named Inventor | Haruki TODA |
| | Title: PHASE-CHANGE MEMORY DEVICE | |
| | | |
| Attorney Docket Number: _____ | | |

| | | |
|--|---|--|
| I hereby appoint: <input checked="" type="checkbox"/> Practitioners associated with the Customer Number | | <div style="font-size: 24pt; margin: 0;">22850</div> |
| as my/our attorney(s) or agent(s) to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith. | | |
| Please recognize or change the correspondence address for the above-identified application to: <input checked="" type="checkbox"/> The address associated with the above-mentioned Customer Number. | | |
| I am the: <input checked="" type="checkbox"/> Assignee of record of the entire interest. See 37 CFR 3.71. | | |
| <u>KABUSHIKI KAISHA TOSHIBA</u> (Name of Assignee) | <u>a Corporation</u> (Type of Assignee, e.g., corporation, partnership, government agency, etc.) | |
| <input checked="" type="checkbox"/> States that it is the assignee of the entire right, title, and interest. A copy of the assignment is attached. | | |
| SIGNATURE OF ASSIGNEE OF RECORD | | |
| The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee. | | |
| | | _____ Date |
| Taisuke Kato _____ Printed or Typed Name | | _____ Telephone Number |
| <u>General Manager, Intellectual Property Division</u> Title | | |
| THIS FORM CAN ONLY BE SIGNED WHERE THERE IS ONLY A SINGLE ASSIGNEE | | |

ASSIGNMENT

- (1-8) Name(s) of Inventor(s) (1) Haruki TODA (5)
 (2) (6)
 (3) (7)
 (4) (8)
- In consideration of the good and valuable considerations paid to each of the undersigned, the undersigned agree(s) to assign, and hereby does assign, transfer and set over to
- (9) Name of Assignee (9) KABUSHIKI KAISHA TOSHIBA
 (10) State of Incorporation of Assignee (10) Tokyo, Japan
 (11) Address of Assignee (11) of 1-1, Shibaura 1-chome, Minato-ku, Tokyo 105-8001, Japan (hereinafter designated as the Assignee) the entire worldwide right, title and interest in the invention known as
 (12) Identification of Invention, such as Title, Case Number or Foreign Application Number (12) PHASE-CHANGE MEMORY DEVICE, 10/507,475 for which the undersigned has (have) executed an application for patent in the United States of America and all patent applications in foreign countries corresponding thereto or based thereon.
 (13) Date(s) of Signing of Declaration (13) on

1) The undersigned agree(s) to execute all papers necessary in connection with any original, reissue, divisional and continuing United States and foreign applications for the above-identified invention and also to execute separate assignments in connection with such applications as the Assignee may deem necessary or expedient.

2) The undersigned agree(s) to execute all papers necessary in connection with any interference which may be declared concerning this application or continuation or division thereof and to cooperate with the Assignee in every way possible in obtaining evidence and going forward with such interference.

3) The undersigned agree(s) to execute all papers and documents and perform any act which may be necessary in connection with claims or provisions of the International Convention for Protection of Industrial Property or similar agreements.

4) The undersigned agree(s) to perform all affirmative acts which may be necessary to obtain a grant of a valid United States patent to the Assignee.

5) The undersigned hereby authorize(s) and request(s) the Commissioner of Patents to issue any and all Letters Patents of the United States resulting from said application or any division or divisions or continuing applications thereof to the said Assignee, as Assignee of the entire interest, and hereby covenants that he has (they have) full right to convey the entire interest herein assigned, and that he has (they have) not executed any agreement in conflict herewith.

6) The undersigned hereby appoints the persons associated with Customer Number:

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the power to insert on this assignment any further identification which may be necessary or desirable in order to comply with the rules of the United States Patent and Trademark Office for recordation of this document.

Date: October 21, 2004 Signature of Inventor 1 Haruki Toda
 Date: _____ Signature of Inventor 2 _____
 Date: _____ Signature of Inventor 3 _____
 Date: _____ Signature of Inventor 4 _____
 Date: _____ Signature of Inventor 5 _____
 Date: _____ Signature of Inventor 6 _____